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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, RESTRICTIONS
AND EASEMENTS FOR MAHOGANY RUN ASSOCIATION, INC.**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS FOR MAHOGANY RUN ASSOCIATION, INC. (MAHOGANY RUN), is made this 10th day of February, 2000, by at least a majority of the owners of property ("OWNERS") encumbered by this Declaration.

Recitals

Whereas, that certain Declaration of Covenants, Easements and Restrictions for Mahogany Run on the real property described on Exhibit A-1 hereto (the "Properties" or the "Property"), was recorded in Official Records Book 1266, Page 367 *et seq.*, of the Public Records of Collier County, Florida (hereinafter called "the Declaration").

Whereas, OWNERS have approved the amendment to this Declaration at a duly organized meeting called therefore for the purpose of complying with recent laws and regulations governing homeowners' associations;

Whereas, OWNERS desire that all of the said real property described on Exhibit A-1 be subject to the terms and conditions of this Amended and Restated Declaration; and

NOW, THEREFORE, OWNERS hereby declare that the Property, and all Parcels now and hereafter existing thereon shall be held, sold, conveyed, encumbered, used and occupied subject to the terms and conditions of this Declaration as covenants running with the land enforceable as aforesaid.

Article I - Definitions

The following terms when used in this Declaration shall have the following meanings;

- (a) "Articles" means the Articles of Incorporation of the Association, as attached hereto as Exhibit B.
- (b) "Association" shall mean and refer to Mahogany Run Association, Inc., a non-profit Florida corporation, whose purpose is to administer the Common Properties, as hereafter defined, in accordance with the provisions of this Declaration and the governing documents of the Association.
- (c) "Board" means the Board of Directors of the Association.

(d) "By-Laws" means the By-Laws of the Association, a copy of which is attached hereto as Exhibit C, as amended from time to time.

(e) "Common Assessment" shall mean the charge against each Owner and his Parcel, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating, Common Properties of the Association (if any), together with those costs of lawn and grounds maintenance of the Parcels, and maintenance, improvement and repair of the roads (as hereafter defined), as necessary and/or required.

(f) "Common Expenses" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacements of the Common Properties (including unpaid Special Assessments) including those costs not paid by the Owner responsible for payment; the commonly metered charges for the Common Properties, if any; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, utilities, gardening services, and other services benefiting the Common Properties and Parcels; the costs of fire, casualty and liability insurance, workmen's compensation insurance, and other insurance covering the Common Properties; the costs of bonding of the members of the management body; taxes paid by the Association; and the costs of any other expenses incurred by the Association for any reason whatsoever in connection with the Common Properties for the benefit of the Owners.

(g) "Common Properties" shall mean and refer to those portions of the Property legally described on Exhibit A-1 hereto and which are intended to be devoted to the common use and enjoyment of the Owners, but whose maintenance is payable jointly (subject to the provisions of this Declaration), in equal proportion by the Owners, including, but not limited to easements and roads as necessary and/or required. At the date of adoption of this Declaration, the Association has no common properties.

(h) "Institutional Lender" shall mean and refer to a governmental agency, commercial or savings bank, savings and loan association, mortgage company, life insurance company, licensed mortgage company, pension fund, or business trust including, but not limited to, a real estate investment trust, or any assignee of a loan made by any such lender including, but not limited to GNMA, FNMA, VA, FHA, or FHLMC, or any private or governmental institution which has insured the loan of a lender or any combination of the foregoing entities.

(i) "Member" shall mean and refer to an Owner, as hereafter defined, who is a member of the Association as provided in Article III hereof.

(j) "Notice" shall mean and refer to:

(i) Written notice delivered personally or mailed to the last known address of the intended recipient, in the manner set forth herein;

(ii) Notice given in any other manner provided in the By-Laws of the Association.

(k) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Parcel upon any portion of the Properties subject hereto, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any holder of a mortgage encumbering a Parcel unless and until such holder has acquired title thereto pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

- (l) "Parcel" shall mean each lot on the plat of Mahogany Run as attached hereto as Exhibit D.
- (m) "Purchase Money Mortgagee" shall mean and refer to either an Institutional Lender, as hereafter defined, or a private lender, which holds a mortgage encumbering a Parcel which was extended for the purpose of purchasing the Parcel, and which has notified the Association in writing that it holds the same.
- (n) "Roads" shall mean those private roads, cul-de-sacs and courts, as from time to time are improved and exist within the Properties.
- (o) "Special Assessments" shall mean a charge against a particular Owner, equal to the cost incurred by the Association pursuant to Section 8.1, and shall also mean the cost of any construction or reconstruction, or unexpected repair or replacement of a capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, or for other purposes deemed appropriate by the Association.

Article II - Owner's Property Rights and Easements

- 2.1 The Owner's property is subject to the Declaration of Covenants Easements and Restrictions, the Articles of Incorporation and By Laws of the Wyndemere Homeowners Association, Inc. which shall be enforced by that Association and may be enforced by the Board.
- 2.2 Owner's Easements of Enjoyment and of Structural Support. Every Owner and each Owner's respective family members, guests, lessees and invitees shall have the right and an easement of ingress and egress, and an easement of use and enjoyment in, to and over the Common Properties which shall be appurtenant to and shall pass with title to every Parcel subject to the following provisions:
- (a) The right of the Association to establish uniform rules and regulations pertaining to the use of the Properties across which the Owner has an easement, as shown on Exhibit A-2 and Exhibit A-3, attached hereto.
- (b) The right of the Association to levy reasonable fines, not to exceed \$50.00 per violation per day, against any member, tenant, guest or invitee for a violation of this Declaration, or Rules and Regulations established by the Association.
- 2.3 Easements for Construction and Utilities. Every Owner shall have the same easements, specifically, and shall also have the following:
- (a) Easements through all of the Common Properties as needed for the construction, maintenance and replacement of utilities, drainage, plumbing, wiring and any other facility for furnishing utility services within those areas of the Common Properties designed for such utilities apparatus.
- (b) Five (5) foot easement along the abutting Parcel for the purpose of construction access for the construction, maintenance and repair on each Parcel. The Owner shall be responsible for restoration of the easement area on the abutting Parcel prior to or not later than the completion of construction on the Owner's Parcel.
- 2.4 Shrubby Abutting Property Lines. The Board in its sole discretion, upon application by any Owner, may require an adjoining Owner to trim any vegetation that encroaches or is so close as to cause maintenance problems on the complaining Owner's property.

2.5 Delegation of Use. Any Owner may extend or delegate, as the case may be, in accordance with the By-Laws, his right of enjoyment to the Common Properties to the members of his family, or to his tenants and contract purchasers who reside on his Parcel, subject to reasonable regulation by the Board.

2.6 Easement for Pedestrian and Vehicular Traffic. In addition to the general easements for use of the Common Properties reserved herein, there shall be a non-exclusive easement appurtenant to such Common Properties for pedestrian traffic over all walkways within the Common Properties.

2.7 Easements for Public Service. In addition to the foregoing easements over the Common Properties, there shall be reserved for Owners within Mahogany Run, easements and the right to grant same for public services, including, but not limited to, utilities service, emergency medical and fire service, and the right of the police to enter upon any part of the Common Properties for the purpose of enforcing the law.

2.8 Waiver of Use. No Owner may exempt himself from personal liability for Assessments duly levied by the Association or release the Parcel owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Properties and the facilities thereon or by abandonment of his Parcel.

Article III - Membership in Association

Every Owner shall be a Member of the Association, and no Owner shall have more than one membership in the Association with respect to any Parcel. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner's Parcel, and every membership of any Owner in the Association shall be appurtenant to and inseparable from ownership of his Parcel. Ownership of such Parcel shall be the sole qualification for membership of an Owner in the Association.

Article IV - Voting Rights

The voting rights of Members shall be as set forth in the Articles and the By-Laws, and votes shall be cast, as set forth in said documents.

Article V - Duties and Powers of Association

The Association, acting through the Board, shall have such powers and duties as are provided for in its Articles and By-Laws.

Article VI - Covenant for Maintenance Assessments

6.1 Creation of the Lien and Personal Obligation for Assessments. Each owner and each successor Owner of any Parcel by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual Common Assessments for Common Expenses and (ii) Special Assessments, such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge upon and secured by a continuing lien upon the Parcel against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Parcel at the time when the assessment fell due. Subject to provisions of this Declaration protecting Purchase Money Mortgagees, the personal obligation for delinquent assessments shall pass to and be assumed by the successor(s)-in-title of such Owner.

6.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners and the Common Properties and in particular for the improvement and maintenance and replacement of the properties, and the repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

The Board, in accordance with the requirements for a change of Common Assessments, as provided in Section 6.6 of this Article, may change the budget and level of Common Assessments at any meeting of the Board. For each twelve month period (hereinafter called the "Assessment Year"), the Common Assessments may be adjusted by vote of the Board as set forth in Section 6.9 of this Article.

6.3 Special Assessments. In addition to the Common Assessments, the Board may levy in any Assessment Year a Special Assessment, applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or unexpected repair or replacement of a capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, or for other purposes deemed appropriate by the Association. The due date of any Special Assessment under this Article shall be fixed in a resolution authorizing such assessment.

6.4 Damage to Common Properties by Owners. Any of the foregoing maintenance, repairs or replacements within the Common Properties which arise out of or is caused by the willful or negligent act of an Owner, his family, guests or invitees shall be done at said Owner's expense or a Special Assessment therefor shall be made against his Parcel.

6.5 Apportionment of Assessments. Common Assessments and Special Assessments provided for in this Declaration shall be apportioned among the Parcels contained within Mahogany Run on an equal basis so that each Parcel contributes the same share toward Assessments as do all others, except as otherwise set forth in Article 8.1. The Assessments shall be apportioned among all Owners of Parcels based on the total number of such Parcels.

6.6 Notice of Change. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the By-Laws. The Board of Directors shall fix the amount of the annual Common Assessment against each Parcel subject to assessment at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto, at least thirty (30) days in advance of each Common Assessment period.

6.7 Estoppel Certificate. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Parcel have been paid. A properly executed certificate of the Association as to the status of the assessments against a Parcel shall be binding upon the Association as of the date of its issuance.

6.8 Annual Income and Expense Statement. The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures distributed to each Member, and to each Purchase Money Mortgagee which has filed a written request for copies of the same with the Board, in the manner provided in the By-Laws.

6.9 Annual Budget. At least thirty (30) days prior to the beginning of each fiscal year, the Board shall prepare and distribute to the Members a written, itemized budget of the expenses to be incurred by the Association during such year in performing its functions under this Declaration, which may include reasonable provision for contingencies and deposits into a Common Properties reserve fund.

6.10 Excess Funds. If at the end of any fiscal year of the Association, the Board determines that there are excess funds remaining in the Association's operating account, over and above the amounts used for the operation of the Association, such excess funds shall be retained by the Association and used to reduce the following year's Common Assessments or be kept in an account for the benefit of the Association. Notwithstanding anything contained in the Articles, By-Laws or this Declaration to the contrary, upon dissolution of the Association, any amount remaining in any reserve fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual respective contributions.

6.11 Exempt Property. Common Expenses shall be assessed against all Parcels.

Article VII - Effect of Non-payment of Assessments
Remedies of the Association

7.1 Effect of Non-Payment of Assessments; Remedies of the Association. Any installment of a Common Assessment or Special Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Parcel. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Parcel. If any installment of any assessment is not paid within thirty (30) days after its due date, the Board may mail an acceleration notice to the Owner and to each Purchase Money Mortgagee of such Parcel which has requested a copy of the notice. The notice shall specify (i) the fact that the installment is delinquent, (ii) the action required to cure the default, (iii) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the particular assessment for the then current fiscal year and sale of the Parcel pursuant to foreclosure of the lien securing the unpaid assessment. The notice shall further inform the Owner of his right to cure after acceleration and to bring a court action to assert the non-existence of a sale. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare acceleration of all of the unpaid balance of the annual Common Assessment and all charges thereon in any manner authorized by law and this Declaration.

7.2 Notice of Claim of Lien. No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date a Notice of Claim of Lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Parcel, and a copy thereof has been recorded by the Association in the office of the Clerk of the Circuit Court of Collier County, Florida; said Notice of Claim of Lien must recite a good and sufficient legal description of any such Parcel, the record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment at eighteen percent (18%) per annum, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such Notice of Claim of Lien shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied.

7.3 Foreclosure Sale. The assessment lien set forth herein may be foreclosed in the same manner as mortgages are foreclosed under Florida law. The Association, through duly authorized agents, shall have the power to bid on any Parcel at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

7.4 Curing of Default. Upon the timely curing of any default for which a Notice of Claim of Lien was filed by the Association, the officers thereof shall record an appropriate release of lien, upon payment

by the defaulting Owner of a fee, to be determined by the Association, to cover the cost of preparing and recording such release. A certificate executed by an officer or agent of the Association stating the indebtedness secured by the liens upon any Parcel created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request upon payment of a reasonable fee.

7.5 Cumulative Remedies. The assessment liens and the right to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

7.6 Subordination of the Lien to Mortgages. The lien securing the assessments provided for herein shall be to the extent provided by Florida Law, subordinate to the lien of any Purchase Money Mortgage (meaning any recorded purchase money mortgage of an Institutional Lender or private lender) made in good faith and for value and recorded prior to the date on which a Notice of Claim of Lien, pursuant to such Notice of Claim of Lien is recorded. The sale or transfer of any Parcel shall not affect the assessment lien. However, the sale or transfer of any Parcel pursuant to the foreclosure or deed in lieu thereof of a Purchase Money Mortgage, shall extinguish the lien of such assessments as to installments which became due prior to such sale or transfer. However, no sale or transfer shall relieve such Parcel from liability for any installments of assessments thereafter becoming due or from the lien thereof.

Article VIII - Maintenance and Repair Obligations

8.1 Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance as provided in this Article, it shall be the duty of the Owners of Parcels at their sole cost and expense, subject to the provisions of this Declaration, to maintain, repair, replace and restore areas subject to their exclusive control, in a neat, sanitary and attractive condition. In the event that any Owner shall permit any improvement, which it is their responsibility to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Association shall have the right, but not the duty, upon fifteen (15) days prior written notice to the appropriate Owner, to correct such condition and to enter upon such property to make such repairs or to perform such maintenance, and the cost thereof shall be charged to the Owner. Said cost shall be a Special Assessment and shall create a lien upon the Parcel affected therein, enforceable in the same manner as other assessments as set forth in this Declaration. Such Owner, shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board, to the amounts payable by such Owner as a Special Assessment. The Board may assess all Owners if not paid by such Owner.

8.2 Maintenance Obligations of Association. Subject to the provisions of Section 8.1 of this Article, the Association shall maintain, or provide for the maintenance of all of the Common Properties, and all improvements thereon, in good order and repair, including any and all utility facilities, and improvements on the Common Properties. In addition to the foregoing, the Association shall:

- (a) provide, or contract for the provision of all necessary landscaping and gardening to properly maintain the trees, plants, grass and other vegetation on each Parcel. It is the express obligation of each individual owner to replace and trim plants, grass and/or other vegetation, as required;
- (b) in the Board's discretion, provide, or contract for the provision of any maintenance, repairs or improvements to any portion of the Property or Parcel that benefit all of the Owners.

- (c) maintain all roads to the extent that Collier County, and or Wyndemere Homeowner's Association, Inc. refuses to maintain such roads;

All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate.

8.3 Reconstruction and Exterior Appearance and Design. The Owners with homes which have suffered damage may apply for approval for reconstruction, rebuilding or repair of the improvements therein to the Board. Application for such approval shall be made in writing together with drawings and elevations showing the proposed reconstruction and the end result thereof. The Architectural Review Committee of the Wyndemere Homeowners Association, Inc. and the Board shall grant, in its sole discretion, such approval if upon completion of the work the exterior appearance and design will be substantially the same as that which existed prior to the date of the casualty. The Board may grant approval if, for good cause shown, the exterior appearance and design varies from the original, so long as any such variations complement the architectural theme or the design of the adjacent buildings. Failure of the Board to act within thirty (30) days after receipt of such request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes shall constitute approval thereof.

8.4 Time Limitation for Reconstruction. The Owners with homes that are damaged shall be obligated to proceed with all due diligence hereunder, and, assuming the availability of funds, the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond their reasonable control.

Article IX - Use Restrictions

All real property comprising Mahogany Run shall be held, used and enjoyed subject to the following limitations and restrictions of this Article.

- 9.1 Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Properties without the prior written consent of the Board,
- 9.2 Driveways. All driveways shall be maintained in the style originally established at the time of construction.
- 9.3 Common Properties. The Common Properties shall be used only for the purposes for which they are intended to be used for the benefit of the Owners.
- 9.4 Trash Containers. All trash containers and contents thereof shall be stored within an enclosed garage or storage area.
- 9.5 Exterior Antennae. No outside satellite receptor dish or device or any other type of electronic device that is utilized or designed to be utilized for the transmission or reception of electronic or other type of signal shall be allowed unless approved by the Board in writing. Regardless of the size of such satellite receptor dish or device, the Board may impose conditions for landscaping and placement of such dishes or devices for aesthetic and/or safety purposes.
- 9.6 Parking. Driveways or roads may be used only for parking automobiles that are in operating condition and for no other parking purposes, and no driveway or road may be used by a person other than an occupant in actual residence, invitee or a guest of an occupant when actually visiting an occupant.

Commercial vehicles, campers, recreational vehicles, mobile homes, boats, trailers, or any vehicle not susceptible to registration by the State of Florida as an "automobile" may not be parked in driveways or Roads and may not be kept on the Common Properties. No vehicular or boat repair or maintenance shall be performed on the Property, except if done within a closed garage and except for emergency repairs sufficient to either start or tow a vehicle therefrom.

9.7 Additional Temporary or Permanent Structures. No structure of a temporary or permanent character, including but not limited to, vehicles, tents, shacks, garages, barns, or other out buildings shall be used or erected on any of the Parcels without the prior written approval of the Association as to its location, design, architecture and appearance.

9.8 Pets. Each Owner may keep not more than two (2) of a normal domesticated household type (such as a cat or dog). The pet must be leashed or carried at all times while anywhere on the Association property outside of the unit. Each pet owner shall be responsible for the immediate removal and disposal of his or her pet's excrement. The ability to keep a pet is a privilege, not a right, and the Board of Directors is empowered to restrict the keeping of such pet(s) and may order and enforce the removal of any such pet(s) which becomes a source of annoyance to other Owners.

9.9 Planting. Because of the obligation of the Association to maintain the landscaping on each Owner's Parcel, no Owner may change (except to replace with similar quality and size) the existing landscaping plan on his Parcel without the consent of the Board.

9.10 Additional Rules and Regulations. The Board, may establish such additional rules and regulations as may be deemed for the best interest of the Association and its Members for purposes of enforcing the provisions of this Article IX.

9.11 Exterior Improvements. No Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors or windows of any buildings (including awnings, antennae, signs, screens, furniture, fixtures and equipment), or to structures or any parking areas without the prior written consent of the Board.

9.12 Nuisances. No nuisances shall be allowed upon the Properties, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Properties by the residents. All parts of the Properties shall be kept in clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor shall any fire hazard be allowed to exist. No use shall be made of any Parcel or of the Properties which would increase the rate of insurance upon the Properties.

9.13 Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance, replacement, modification or repair of the Property shall be the same as is elsewhere herein specified with respect to other maintenance, repair and replacement.

9.14 Single Family. Parcels may be used for detached single family Dwelling Units and appurtenant uses and for no other purposes.

9.15 Architectural Guidelines. The following Architectural Guidelines shall apply to all Parcels at Mahogany Run and the Association shall have the power to enforce the same.

(a) Architectural design, exterior materials (including roofs), and colors must be approved by the Board.

- (b) All painting must be reviewed by the Board in accordance with the Mahogany Run Maintenance Policy attached hereto as Exhibit E.
- (c) All exterior light fixtures must be specified as to standard design and finish and approved by the Board.
- (d) All driveways must be paved with the same paver style and color as approved by the Board.
- (e) Landscape plans must be approved by the Board. All landscape irrigation systems shall be installed underground.
- (f) All mailboxes shall be subject to the approval of the Board.
- (g) All HVAC/electrical services shall be screened from view.

9.16 Architectural Review Committee. All proposed construction of improvements or material alterations to the landscaping, exterior of any existing structure, or Common Properties of a Parcel must be submitted in writing to the Board for approval and to the Architectural Review Committee of the Wyndemere Homeowners Association, Inc.

Article X - Damage or Destruction to Common Properties

Damage or destruction of all or any portion of the Common Properties shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary.

10.1 Sufficient Insurance Proceeds. If in the event of damage or destruction to the Common Properties or any portion thereof, the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Properties to be repaired and reconstructed substantially as it previously existed.

10.2 Insufficient Proceeds Less Than \$10,000. If the insurance proceeds are within Ten Thousand Dollars (\$10,000.00) or less of being sufficient to effect total restoration to the Common Properties, then the Association shall cause the Common Properties to be repaired and reconstructed, and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment equally against each of the Owners, in accordance with the provisions of Section 6.5 of Article VI of this Declaration.

10.3 Insufficient Proceeds Greater Than \$10,000. If the insurance proceeds are insufficient by more than Ten Thousand Dollars (\$10,000.00) to effect total restoration to the Common Properties, then by written consent of two-thirds (2/3) of the Owners, they shall determine whether: (i) to build and restore in substantially the same manner as the improvements existed prior to damage and to raise the necessary funds over the insurance proceeds by levying equal Special Assessments against all Parcels; (ii) to rebuild and restore in a way which utilizes all available insurance proceeds and an additional amount not in excess of Ten Thousand Dollars (\$10,000.00), and which is assessable equally, replacing these improvements with only such variations in design as will complement the architectural theme or design of the adjacent buildings; (iii) to not rebuild and to distribute the available insurance proceeds equally to the Owners and Mortgagees of the Parcels as their interest may appear; or to use the available insurance proceeds to remove the destroyed or damaged improvements, and to replace the same with other improvements.

10.4 Misconduct by Owner. Each Owner shall be liable to the Association for any damage to the Common Properties not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family and guest, both minor and adult, including attorneys fees and costs incurred to collect such liability. Notwithstanding the foregoing, the Association reserves the right to levy a Special Assessment against any such Owner, equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Parcel, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Special Assessment against the Parcel and may be collected as provided herein for the collection of Common Assessments.

Article XI - Insurance

11.1 Common Properties. The Association shall, to the extent allowable and necessary and at the highest insurable value, keep all improvements on the Common Properties insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Properties shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

11.2 Waiver of Subrogation. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, and any management company, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

11.3 Liability and Other Insurance. The Association shall obtain and maintain comprehensive public liability insurance, including medical payments, liability insurance and malicious mischief, in an amount not less than One Million Dollars (\$1,000,000.00), insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross liability endorsement insuring each Owner and the Association, the Board and any management company, from liability in connection with the Common Properties, the premiums for which are Common Expenses included in the Common Assessments made against the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits adjusted at its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board and any management company thereof against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof.

11.4 Waiver by Insurer. Whenever obtainable, insurance policies maintained by the Association shall provide for the following: (a) that the policy may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Purchase Money Mortgagee as that term is herein defined; (b) that the insurer's right of subrogation is waived against the Association and against Members individually and as a group; (c) that the insurance is not prejudiced and the insurer may not avoid liability of a loss that is caused by an act of the Board or by a member or members of the Board which is not in the control of such members collectively; and (d) that the policy is primary in the event that members of the Board have other insurance covering the same loss.

Article XII - Mortgagee Protection Clause

The following provisions are for the benefit of Purchase Money Mortgagees and to the extent these provisions conflict with any other provisions of the Declaration, these provisions shall control:

12.1 Notice of Default. Each Purchase Money Mortgagee, at its written request, is entitled to written notification from the Association of any default by the mortgagor of such Parcel in the performance of such mortgagor's obligations under this Declaration, the Articles, or the By-Laws, which default is not cured within thirty (30) days after the Association learns of such default.

12.2 Mortgage Liability for Assessments. Any Purchase Money Mortgagee, which obtains title to such Parcel pursuant to the remedies provided in such mortgage or by deed in lieu of foreclosure, shall take title to such Parcel free and clear of any claims for unpaid assessments or charges due to the Association which accrued prior to the acquisition of title to such Parcel by the mortgagee, except to the extent a Notice of Claim therefor was filed prior to recording of such Mortgage. This shall be limited to as permitted by Florida law.

12.3 Books and Records. Purchase Money Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

Article XIII - Encroachments; Easements

13.1 Encroachments. If (a) any portion of the Common Properties; or (b) any encroachment shall hereafter occur as the result of (i) construction of any building or other improvements; (ii) any alteration or repair to the Common Properties or any other portion of the real property subjected to this Declaration; or (iii) any repair or restoration of any improvements or any of the Common Properties after damage by fire or other casualty; or (iv) any taking by condemnation or eminent domain proceedings of all or any portion of Common Properties; or (v) any shifting or settling of improvements, then in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the structure causing said encroachment shall stand.

13.2 Pipes, Wires, Cables, Conduits, Public Utility Lines, etc. Each portion of Mahogany Run shall have an easement in common with all other portions thereof to use maintain, repair, alter and replace all pipes, wires, vents, cables, conduits, public utility lines, and similar related facilities located in Mahogany Run and serving such portion thereof. Each portion of Mahogany Run shall be subject to an easement in favor of all other portions thereof to use, maintain, repair, alter and replace the pipes, wires, vents, cables, conduits, public utility lines and other similar or related facilities located in such portion of Mahogany Run and serving other portions thereof, provided that such easements do not unreasonably interfere with the Owners use of their Parcels.

13.3 Easements of Support. Whenever any structure included in the Common Properties adjoins any structure included in any other portion of Mahogany Run, each said structure shall have and be subject to an easement of support and necessity in favor of the other structure. Any structure or building erected upon the Common Properties shall have an easement of support and necessity upon that portion of the Common Property where the structure or building is located.

Article XIV - General Provisions

14.1 Enforcement. Breach of any of the covenants contained in this Declaration, the Articles, or the By-Laws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by the Association. Any judgment rendered in any action or proceedings pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. The remedies herein provided for breach of the covenants contained in this Declaration or in the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive. The failure of the Association to enforce any of the covenants contained in this Declaration or in the By-Laws shall not constitute a waiver of the right to enforce the same thereafter. A breach of the covenants, conditions or restrictions contained in this Declaration or in the By-Laws, shall not affect or impair the lien or charge of any mortgage made in good faith and for value on any Parcel, provided, however, that any subsequent Owner of such Parcel shall be bound by said covenants, whether such Owner's title was acquired by foreclosure sale or otherwise.

14.2 Severability. Invalidation of any one or more of these covenants, conditions, or restrictions in whole or in part by judgment or court order shall in no way affect the validity of any other provisions which shall remain in full force and effect.

14.3 Term. The covenants and restrictions of this Declaration shall run with title and bind the property hereby encumbered, and shall inure to the benefit of and be enforceable by the Association and the Owners subject to this Declaration, their respective legal representative, heirs, successors and assigns, for a term of twenty-one (21) years from the date this Declaration is recorded, after which time said covenants, conditions, reservation of easements, equitable servitudes and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, approved by the then Owners of fifty-one percent (51%) of the Parcels, has been recorded, agreeing to change said covenants and restrictions in whole or in part.

14.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of Mahogany Run as a residential community. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

14.5 Amendments. This Declaration may be amended by a fifty-one percent affirmative vote of the Members.

14.6 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Properties to the public, or for any public use.

14.7 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Parcel or other portion of Mahogany Run does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property.

14.8 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States

mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

IN WITNESS WHEREOF, the President of the Association has executed this Declaration on the date first above written.

Signed, Sealed and Delivered
in the presence of:

MAHOGANY RUN ASSOCIATION, INC.

[Signature]
Witness
Print Name: Robert C. Hubbard

[Signature]
By: Sharon B. Hoffman
Its: President

[Signature]
Witness
Print Name: Kristine Hughes

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 10 day of February 2000, by Sharon B. Hoffman, as President of Mahogany Run Homeowners Association, Inc., who is personally known to me, and for the purposes therein expressed with due authority and on behalf of the corporation.

NOTARY SEAL



Kristine D. Hughes
Commission # CC 804124
Expires Jan. 24, 2003
Bonded thru
Atlantic Bonding Co., Inc.

[Signature]
NOTARY PUBLIC
My Commission Expires: